The Commission's Secretary
Office of the Secretary
Federal Communications Commission

IB Docket No. 04-398

Comments by the Telecom Italia Group

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Foreword

The following considerations by the Telecom Italia group are submitted as a commentary in the framework of the FCC's Notice of Inquiry in the matter of the effect of foreign mobile termination rates on U.S. customers.

The Telecom Italia Group is one of the world's largest fixed telecommunications operators, with approximately 26.2 million subscriber fixed-lines installed as for September 2004 (including ISDN equivalent lines). Through its subsidiary TIM, the Telecom Italia Group is also the largest mobile telecommunications operator in Italy and one of the largest in the world, with approximately 52.0 million mobile lines in September 2004, of which 26.2 million in Italy. TIM is one of three operators with the right to provide GSM digital mobile telecommunications services and one of three operators with the right to provide DCS 1800 digital mobile telecommunications services. TIM is one of the entities which have acquired a UMTS licence to provide third generation mobile services in Italy.
The Telecom Italia Group also provides leased lines and data communications services, internet services and IT software and services. Following the Merger with Olivetti, Telecom Italia also operates in the office products, IT office products and specialised application for service automation in banking retail, gaming and public authorities services and specialised automation systems sector through Olivetti Tecnost.

The Telecom Italia Group's international portfolio of subsidiaries and investments includes fixed and mobile telecommunications companies which operate mainly in Latin America and certain countries in Europe.

On December 7, the Telecom Italia and TIM Boards of Directors approved a plan for the integration of the two companies. The objective of the plan is the simplification of the Group's ownership structure and the optimization of the financial and capital structures of the Group resulting from the merger.

a) TIM comments to the notice of Inquiry into The Effect of Foreign Mobile Termination Rates on U.S. customers

Following the comments sent to the FCC on March 2004 on the same topic, TIM would like to take the opportunity to comment on the notice of Inquiry into The Effect of Foreign Mobile Termination Rates on U.S. customers, updating the information and figures previously presented.

- Competitiveness of Mobile Sector

In addressing the questions raised in the inquiry TIM would like to point out that the mobile market in Europe is very competitive. Despite the relatively short existence of the mobile market, its competitive character has resulted in an unparalleled geographic footprint and a continuous stream of product innovations. The key driver of future growth in the mobile sector in the EU is likely to be the deployment of advanced value added services. As indicated by the Commission in its recent Communication on European electronic communications Regulations and market 2004, 3G launches have accelerated in 2004 and it is estimated that there are around 2.6 million 3G subscribers in the EU.
In the light of the described success of the European mobile market, it is difficult to conceive how consumers could be harmed.

Concerning in particular the mobile pricing model of Calling Party Pays, it has to be borne in mind that:

- this model has lead to recognized advances in mobile penetration, often crucial to involve the biggest possible number of users. The average penetration rate of mobile services also continues to grow, and is now at 83% for the EU 25. There are now 379 million mobile subscribers[1].

- the adoption of such a model is contained in many national regulatory rules, hence any attempt to push for its modification for alleged anticompetitive effects should be submitted to competent international bodies, such as the WTO, where appropriate instruments exist to solve these types of controversial matters.

- Recent Changes in the regulatory environment in the European Union

The new regulatory framework that was required to be implemented in the Member States by 24 July 2003 defines processes that National Regulatory Authorities (NRAs) must follow, including market analysis methodology and application of appropriate remedies in the event of market failure. One of these markets is the mobile call termination market. The guidelines that have been provided by the European Commission on the analysis and selection of remedies are designed to address possible abuse of dominance should this arise.

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[1] See X Commission Communication on European electronic communications Regulations and market 2004. page 4.

The common regulatory framework is now in place across the EU that addresses the mobile call termination market using a competition law based methodology. This, together with increasing competition, is having the effect of continuing to drive down mobile call termination prices across the EU and thus any suggestion that US customers are being subjected to abusive behaviour cannot be sustained.

- European Regulators Are Actively Working to Reduce Mobile Termination Rates

In Europe, the costs of interconnection on the fixed and mobile networks are regulated by National Regulatory Authorities which have the power to impose reductions on the rates proposed by dominant fixed and mobile operators. While until recently, focus of EU regulation had been on fixed incumbent operators, the mobile termination issue is becoming more and more relevant as the growth of mobile telephony in terms of subscribers has in most cases equalled or exceeded the number of fixed lines.

For instance, during the past year, most European NRAs have taken action or are planning to take action in reducing mobile termination charges, as a result of the market analysis carried out on the basis of the new regulatory framework. This decrease has been acknowledged by the EU Commission, which, in its X Implementation Report of 2004, stated that "*in the last 12 months, the major development is that fees cuts have affected both SMP and non-designated operators. The average termination rate for SMP operators has decreased by 14%, while the reduction for the non SMP operators was 13%.".*

In **Italy**, the National Regulatory Authority, AGCOM, implemented in February 2003 a further tariff manoeuvre, setting the average tariff at 14.95 euro-cent. This manoeuvre led to a reduction of 25% in the mobile termination tariffs in Italy. At the same time AGCOM introduced an yearly network cap that will reduce mobile termination tariff of about 30%/35% in the 2004-2007 period. Such decision should be effective at the end of market analysis process (by the mid of 2005 year).

Furthermore, U.S. international carriers and European international carriers are in the same bargaining position with regards to termination rates to be paid to mobile operators since, as previously said, no discrimination is possible between national and international interconnection. It is therefore unlikely that European mobile operators may abuse their dominant position, considering the reduction of the termination charges granted by mobile operators in the past years, following competitive pressure and regulatory interventions. Moreover, the EU Commission is called upon to constantly monitor the market behaviour of operators and to apply EU competition rules if a European operator is considered to be abusing its dominant position.

For the reasons stated above, TIM considers that not only AGCOM – which is by Law a public agency independent from the Italian Government - has so far carried out its mandate in full compliance of international trade agreements and of EU Directives, but also that the Italian market mechanisms have fully anchored TIM's termination rates to a very competitive environment. It must also be noted that no proceedings have been launched in the EU or in Italy against TIM for its termination rates, underlining TIM's complete compliance with domestic and European laws and regulations.

- Final remarks

TIM submits that the mobile market is competitive and that mobile termination charges have continued to fall over the past years.

Mobile termination rates in Europe are determined by the structure of that market, in particular by the 'Calling Party Pays' ("CPP") system. CPP markets necessarily exhibit different demand conditions and therefore different pricing patterns than do either "receiving party pays" ("RPP") mobile markets (because the mentioned different structure) or fixed services markets (because of the different nature of cost structure of the businesses). TIM reckons it would be quite wrong and inappropriate to compare US termination prices with European termination rates in isolation, without taking into account the overall context.

TIM would like to respectfully advise the FCC against approaching the issue of mobile call termination in a unilateral way. With mobile call termination US carriers cannot exert reciprocal bargaining power in bi-lateral relationships. Any unilateral measures would therefore not have the required effect. Concerns the FCC may have should therefore be discussed in the existing *fora* such as the WTO or in case of antitrust issues in the context of the transatlantic dialogue between the US and the EU.

TIM is confident that the implementation of the new regulatory framework and the competitive pressure on termination rates in particular, are leading toward the assessment of the competitiveness of the mobile termination market in Europe.

b) <u>TI Sparkle comments to the notice of Inquiry into The Effect of Foreign Mobile Termination Rates on U.S. customers</u>

TI Sparkle is the wholly-owned subsidiary of Telecom Italia S.p.A. It has been operational since January 1, 2003, after the International Wholesale Services Division was spun-off to the former TMI Italia S.p.A. on December 31, 2002. The company carries the Voice, Data and Internet protocol services of international traffic, using both its own and third-party lines.

TI Sparkle would like to submit comments on the request of information on mobile settlements: whether and to what extent foreign fixed carriers are "marking up" the charges that they pay mobile network operators to terminate traffic.

- The International market scenario for mobile services

Mobile services in the world have been an outstanding success. In particular in Europe GSM base services have gained a significant consumer base, in several cases even higher then fixed services penetration[2]. In Europe, as well as in most countries in the world, mobile tariffs are based on the Calling Party Pays (CPP) principle were by, as specified in the NOI, the calling party's network operator generally pays a call termination fee to a mobile network operator that terminates the call.

In this market scenario, at international level, the circumstance that mobile telephony is increasing significantly is the obvious effect of the world wide success of mobile services. International carriers such as TI Sparkle as well as US international carriers, in order to insure world wide reach to and from mobile users, negotiate interconnection agreements either directly with mobile operators or negotiate termination to mobile networks with fixed operators that have a direct interconnection with mobile national operators. In any case, TI Sparkle, as well as US international carriers, have several choices of providers that offer mobile termination rates and normally chooses more than one option of traffic termination in order to provide to its own wholesale customers, such as US international carriers, different options to terminate the call on a mobile network. In fact the wholesale customers of TI Sparkle could have different needs in terms of quality, term of the Agreement, pricing, etc.

Since the market for wholesale international services is highly competitive, there are many options to offer termination services over fixed and mobile networks, especially in a highly competitive market such as the European market. Therefore, TI Sparkle as well as its competitors in the wholesale voice carrier business has to maximize the minutes of traffic exchanged worldwide. Of this bulk of international traffic, mobile traffic is an important part. In order to reach this objective and taking into account the fierce competition over the wholesale voice market, the margin that TI Sparkle, as well as its competitors, have over wholesale mobile traffic revenues is very limited and is based on the cost of remuneration of its international network services. The higher termination rates existing for mobile

[2] according to the 10th Report on Communications Market the average penetration rate of mobile services continues to grow and is now at 83% for the EU 25 countries where there are more then 379 million subscribers

versus fixed termination services are justified by the national interconnection rates applied to terminate a call on each national mobile network.

- The international *fora* on telecommunication services

TI Sparkle believes that the principles of cost orientation and non-discrimination regarding international mobile traffic has been already taken into account by the proper international *fora*, like WTO and by the International Telecommunication Union (ITU).

Member States are subject to commitments undertaken under the WTO/GATS, including the Forth Protocol of 1997 that concluded the negotiations on basic telecommunications services.
Under WTO/GATS principles the most favoured nation (MNF) treatment is applied that implies that the market access conditions for operators from different WTO members in like conditions must be the same therefore, insuring the respect on the non-discrimination principle.
Under the WTO/GATS agreements many different countries (including developing countries) undertook additional commitments on the basis of the GATS Reference Paper on regulatory principles (on 1997). The additional commitment stipulate that, within the limits of permitted market access, interconnection with major suppliers will be ensured under non-discriminatory conditions, in a timely fashion, and on cost-oriented basis. Since 1997, several new WTO members also undertook such commitments in the context of their accession negotiations.
US carriers are for sure considered as "major suppliers" when negotiate interconnection with operators from countries which took commitments in 1997 under the WTO/GATS agreement on basic telecommunications, therefore the interconnections provisions of the Reference Paper apply to these operators in addition to the general provisions under the GATS regarding national treatment and MNF treatment.

With reference to ITU regulations, ITU-T Recommendation D.140 on "Accounting rate principles for international telephone services" recommends "that the following principles be applied when establishing or revising accounting rates for international telephone services:

1. accounting rates for international telephone services should be cost-oriented and should tale into account relevant cost trends;
2. each Administration should apply the above principle to all relations on a non-discriminatory basis…"

Moreover, in annex A to Recommendation D.140, the guidelines that identify the main cost elements to be used when establishing or revising cost-oriented accounting rates and accounting rate shares for the international telephone service are specified. In particular, the networks elements used to provide the international telephone services are generally classified as follows:

- international transmission facilities;
- international switching facilities;
- national extension.

ITU-T Recommendation D.150 "New system for accounting in international telephony" further specifies that notwithstanding the billing procedure applied

(Flat –rate price procedure, traffic unit price procedure, accounting revenue division procedure, settlement rate procedure, termination charge procedure) there are always two elements to be taken into account the international facilities used on one end and the national extension on the other (see Paragraph 2 of Recommendation D.150).

The above mentioned principles are applied by TI Sparkle as well as by the other international carriers when defined their bilateral agreement on voice traffic termination.

TI Sparkle believes that the abovementioned *fora* (GATS and ITU) are the appropriate place where to raise possible needs to amend the existing rules on international tariff principles.

- **The role of national regulators**

With reference to the role of foreign national regulation in evaluating mobile termination rates, TI Sparkle believes that national rules are the responsibility of national regulators and that the proper place to challenge national regulation is at bilateral or multinational negotiation level between Member States such as at the World Trade Organisation negotiation level.
In the European Union there is already a regulatory environment that is aimed at ensuring harmonisation between rules applied by member States in each Member State. As already acknowledged in the Notice of Inquiry Appendix B, the European Union in line with the Framework Directive has already put in place a regulatory mechanism that defining the market of call termination provides for ex ante regulation in case said market lacks effective competition. Said regulatory framework is going to be implemented in all Member States of the European Union whereby the competent Authorities have finalised or are in the process of finalising a market analysis on mobile termination market.
TI Sparkle believes that, at least at European Union level, there are sufficient regulatory safeguards against possible market abuse by mobile operators and that there is no need of additional intervention by the FCC or by international organisations.

- **Final remarks**

The worldwide market for wholesale international services is highly competitive and there are many options to offer termination services over mobile networks.
International tariff principles as well as national mobile interconnection rates are regulated respectively at international level (by ITU and GATS) and at national level (by national regulators). In particular at EU level where mobile traffic is particularly consistent and where CPP principle applies, the existing regulatory framework contains specific regulation that insure an appropriate mechanism to avoid market abuse with reference to mobile termination rates.

TI Sparkle believes that in the existing market scenario international carriers do not and cannot (if they wish to be a player in such competitive market) apply excessive pricing with reference to mobile traffic and that there is no need of an intervention from the FCC in this respect.